

AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE MAY 7, 2008

AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1441**

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**Introduced by Senator Ridley-Thomas**

February 21, 2008

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An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.8, 2770.11, 2770.12, 3534.1, 3534.3, 3534.4, 3534.9 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. Healing arts practitioners: ~~alcohol and drug~~ substance abuse.

Existing law requires various healing arts licensing boards, *including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California*, to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, *and gives the diversion evaluation committees certain duties related to termination of a license from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records, as specified.*

This bill would establish in the Department of Consumer Affairs the ~~Diversion Coordination~~ *Substance Abuse Coordination* Committee, which would be comprised of the executive officers of ~~those the~~ *the department's* healing arts licensing boards, as specified, ~~that establish and maintain a diversion program or diversion evaluation committee, and would establish in the department the Licensee Drug and Alcohol Addiction Coordination Committee, which would be comprised of the executive officers of all other healing arts licensing boards.~~ The bill would require ~~these committees to meet periodically at the discretion of the department and to each issue the committee to formulate,~~ no later than January 1, 2010, ~~a set of best practices and recommendations, as specified~~ *uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees.* The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties previously assigned to the diversion evaluation committees under those programs, including, as specified, duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate in an advisory role to the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations to the program managers.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature hereby finds and declares all of
- 2     the following:
- 3     (a) Substance abuse is an increasing problem in the health care
- 4     professions, where the impairment of a health care practitioner
- 5     for even one moment can mean irreparable harm to a patient.

1 (b) Several health care licensing boards have “diversion  
2 programs” designed to identify substance-abusing licensees, direct  
3 them to treatment and monitoring, and return them to practice in  
4 a manner that will not endanger the public health and safety.

5 (c) Substance abuse monitoring programs, particularly for  
6 health care professionals, must operate with the highest level of  
7 integrity and consistency. Patient protection is paramount.

8 (d) The diversion program of the Medical Board of California,  
9 created in 1981, has been subject to five external performance  
10 audits in its 27-year history and has failed all five audits, which  
11 uniformly concluded that the program has inadequately monitored  
12 substance-abusing physicians and has failed to promptly terminate  
13 from the program, and appropriately refer for discipline,  
14 physicians who do not comply with the terms and conditions of  
15 the program, thus placing patients at risk of harm.

16 (e) The medical board’s diversion program has failed to protect  
17 patients from substance-abusing physicians, and the medical board  
18 has properly decided to cease administering the program effective  
19 June 30, 2008.

20 (f) The administration of diversion programs created at other  
21 health care boards has been contracted to a series of private  
22 vendors, and none of those vendors has ever been subject to a  
23 performance audit, such that it is not possible to determine whether  
24 those programs are effective in monitoring substance-abusing  
25 licensees and assisting them to recover from their addiction in the  
26 long term.

27 (g) Various health care licensing boards have inconsistent or  
28 nonexistent standards that guide the way they deal with  
29 substance-abusing licensees.

30 (h) Patients would be better protected from substance-abusing  
31 licensees if their regulatory boards agreed to and enforced  
32 consistent and uniform standards and best practices in dealing  
33 with substance-abusing licensees.

34 SEC. 2. It is the intent of the Legislature that:

35 (a) Pursuant to Section 156.1 of the Business and Professions  
36 Code and Section 8546.7 of the Government Code, that the  
37 Department of Consumer Affairs conduct a thorough audit of the  
38 effectiveness, efficiency, and overall performance of the vendor  
39 chosen by the department to manage diversion programs for  
40 substance-abusing licensees of health care licensing boards created

1 *in the Business and Professions Code, and make recommendations*  
2 *regarding the continuation of the programs and any changes or*  
3 *reforms required to ensure that individuals participating in the*  
4 *programs are appropriately monitored, and the public is protected*  
5 *from health care practitioners who are impaired due to alcohol*  
6 *or drug abuse or mental or physical illness.*

7 *(b) The audit shall identify, by type of board licensee, the*  
8 *percentage of self-referred participants, board-referred*  
9 *participants, and board-ordered participants. The audit shall*  
10 *describe in detail the diversion services provided by the vendor,*  
11 *including all aspects of bodily fluids testing, including, but not*  
12 *limited to, frequency of testing, randomicity, method of notice to*  
13 *participants, number of hours between the provision of notice and*  
14 *the test, standards for specimen collectors, procedures used by*  
15 *specimen collectors, such as whether the collection process is*  
16 *observed by the collector, location of testing, and average*  
17 *timeframe from the date of the test to the date the result of the test*  
18 *becomes available; group meeting attendance requirements,*  
19 *including, but not limited to, required qualifications for group*  
20 *meeting facilitators, frequency of required meeting attendance,*  
21 *and methods of documenting and reporting attendance or*  
22 *nonattendance by program participants; standards used in*  
23 *determining whether inpatient or outpatient treatment is necessary;*  
24 *and, if applicable, worksite monitoring requirements and*  
25 *standards. The audit shall review the timeliness of diversion*  
26 *services provided by the vendor; the thoroughness of*  
27 *documentation of treatment, aftercare, and monitoring services*  
28 *received by participants; and the thoroughness of documentation*  
29 *of the effectiveness of the treatment and aftercare services received*  
30 *by participants. In determining the effectiveness and efficiency of*  
31 *the vendor, the audit shall evaluate the vendor's approval process*  
32 *for providers or contractors that provide diversion services,*  
33 *including specimen collectors, group meeting facilitators, and*  
34 *worksite monitors; the vendor's disapproval of providers or*  
35 *contractors that fail to provide effective or timely diversion*  
36 *services; and the vendor's promptness in notifying the boards*  
37 *when a participant fails to comply with the terms of his or her*  
38 *diversion contract or the rules of the board's program. The audit*  
39 *shall also recommend whether the vendor should be more closely*  
40 *monitored by the department, including whether the vendor should*

1 *provide the department with periodic reports demonstrating the*  
 2 *timeliness and thoroughness of documentation of noncompliance*  
 3 *with diversion program contracts and regarding its approval and*  
 4 *disapproval of providers and contractors that provide diversion*  
 5 *services.*

6 *(c) The vendor and its staff shall cooperate with the department*  
 7 *and shall provide data, information, and case files as requested*  
 8 *by the department to perform all of his or her duties. The provision*  
 9 *of confidential data, information, and case files from health*  
 10 *care-related boards and the vendor to the department shall not*  
 11 *constitute a waiver of any exemption from disclosure or discovery*  
 12 *or of any confidentiality protection or privilege otherwise provided*  
 13 *by law that is applicable to the data, information, or case files. It*  
 14 *is the Legislature's intent that the audit be completed by June 30,*  
 15 *2010, and on subsequent years thereafter as determined by the*  
 16 *department.*

17 *SEC. 3. Article 3.6 (commencing with Section 315) is added*  
 18 *to Chapter 4 of Division 1 of the Business and Professions Code,*  
 19 *to read:*

20  
 21 *Article 3.6. Uniform Standards Regarding Substance-Abusing*  
 22 *Healing Arts Licensees*  
 23

24 *315. (a) For the purpose of determining uniform standards*  
 25 *that will be used by healing arts boards in dealing with*  
 26 *substance-abusing licensees, there is established in the Department*  
 27 *of Consumer Affairs the Substance Abuse Coordination Committee.*  
 28 *The committee shall be comprised of the executive officers of the*  
 29 *department's healing arts boards established pursuant to Division*  
 30 *2 (commencing with Section 500), the State Board of Chiropractic*  
 31 *Examiners, and the Osteopathic Medical Board of California. The*  
 32 *Director of Consumer Affairs shall chair the committee.*

33 *(b) The committee shall be subject to the Bagley-Keene Open*  
 34 *Meeting Act (Article 9 (commencing with Section 11120) of*  
 35 *Division 3 of Title 2 of the Government Code).*

36 *(c) By January 1, 2010, the committee shall formulate uniform*  
 37 *and specific standards in each of the following areas that each*  
 38 *healing arts board shall use in dealing with substance-abusing*  
 39 *licensees, whether or not a board chooses to have a formal*  
 40 *diversion program:*

1     (1) *Specific requirements for a clinical diagnostic evaluation*  
2     *of the licensee, including, but not limited to, required qualifications*  
3     *for the providers evaluating the licensee.*

4     (2) *Specific requirements for the temporary removal of the*  
5     *licensee from practice, in order to enable the licensee to undergo*  
6     *the clinical diagnostic evaluation described in subdivision (a) and*  
7     *any treatment recommended by the evaluator described in*  
8     *subdivision (a) and approved by the board, and specific criteria*  
9     *that the licensee must meet before being permitted to return to*  
10    *practice on a full-time or part-time basis.*

11    (3) *Specific requirements that govern the ability of the licensing*  
12    *board to communicate with the licensee's employer about the*  
13    *licensee's status and condition.*

14    (4) *Standards governing all aspects of required testing,*  
15    *including, but not limited to, frequency of testing, randomicity,*  
16    *method of notice to the licensee, number of hours between the*  
17    *provision of notice and the test, standards for specimen collectors,*  
18    *procedures used by specimen collectors, the permissible locations*  
19    *of testing, whether the collection process must be observed by the*  
20    *collector, back-up testing requirements when the licensee is on*  
21    *vacation or otherwise unavailable for local testing, requirements*  
22    *for the laboratory that analyzes the specimens, and the required*  
23    *maximum timeframe from the test to the receipt of the result of the*  
24    *test.*

25    (5) *Standards governing all aspects of group meeting attendance*  
26    *requirements, including, but not limited to, required qualifications*  
27    *for group meeting facilitators, frequency of required meeting*  
28    *attendance, and methods of documenting and reporting attendance*  
29    *or nonattendance by licensees.*

30    (6) *Standards used in determining whether inpatient, outpatient,*  
31    *or other type of treatment is necessary.*

32    (7) *Worksite monitoring requirements and standards, including,*  
33    *but not limited to, required qualifications of worksite monitors,*  
34    *required methods of monitoring by worksite monitors, and required*  
35    *reporting by worksite monitors.*

36    (8) *Procedures to be followed when a licensee tests positive for*  
37    *a banned substance.*

38    (9) *Procedures to be followed when a licensee is confirmed to*  
39    *have ingested a banned substance.*

1     (10) *Specific consequences for major violations and minor*  
2 *violations. In particular, the committee shall consider the use of*  
3 *a “deferred prosecution” stipulation similar to the stipulation*  
4 *described in Section 1000 of the Penal Code, in which the licensee*  
5 *admits to self-abuse of drugs or alcohol and surrenders his or her*  
6 *license. That agreement is deferred by the agency unless or until*  
7 *the licensee commits a major violation, in which case it is revived*  
8 *and the license is surrendered.*

9     (11) *Criteria that a licensee must meet in order to petition for*  
10 *return to practice on a full-time basis.*

11     (12) *Criteria that a licensee must meet in order to petition for*  
12 *reinstatement of a full and unrestricted license.*

13     (13) *If a board uses a private-sector vendor that provides*  
14 *diversion services, standards for immediate reporting by the vendor*  
15 *to the board of any and all noncompliance with any term of the*  
16 *diversion contract or probation; standards for the vendor’s*  
17 *approval process for providers or contractors that provide*  
18 *diversion services, including, but not limited to, specimen*  
19 *collectors, group meeting facilitators, and worksite monitors;*  
20 *standards requiring the vendor to disapprove and discontinue the*  
21 *use of providers or contractors that fail to provide effective or*  
22 *timely diversion services; and standards for a licensee’s*  
23 *termination from the program and referral to enforcement.*

24     (14) *If a board uses a private-sector vendor that provides*  
25 *diversion services, the extent to which licensee participation in*  
26 *that program shall be kept confidential from the public.*

27     (15) *If a board uses a private-sector vendor that provides*  
28 *diversion services, a schedule for external independent audits of*  
29 *the vendor’s performance in adhering to the standards adopted*  
30 *by the committee.*

31     (16) *Measurable criteria and standards to determine whether*  
32 *each board’s method of dealing with substance-abusing licensees*  
33 *protects patients from harm and is effective in assisting its licensees*  
34 *in recovering from substance abuse in the long term.*

35     SEC. 4. *Section 1695.1 of the Business and Professions Code*  
36 *is amended to read:*

37     1695.1. As used in this article:

38     (a) “Board” means the Board of Dental Examiners of California.

39     (b) “Committee” means a diversion evaluation committee  
40 created by this article.

1 (c) “Program manager” means the staff manager of the  
2 diversion program, as designated by the executive officer of the  
3 board.

4 SEC. 5. Section 1695.5 of the Business and Professions Code  
5 is amended to read:

6 1695.5. (a) The board shall establish criteria for the acceptance,  
7 denial, or termination of licentiates in a diversion program. Unless  
8 ordered by the board as a condition of licentiate disciplinary  
9 probation, only those licentiates who have voluntarily requested  
10 diversion treatment and supervision by a committee shall  
11 participate in a diversion program.

12 (b) A licentiate who is not the subject of a current investigation  
13 may self-refer to the diversion program on a confidential basis,  
14 except as provided in subdivision (f).

15 (c) A licentiate under current investigation by the board may  
16 also request entry into the diversion program by contacting the  
17 board’s Diversion Program Manager. The Diversion Program  
18 Manager may refer the licentiate requesting participation in the  
19 program to a diversion evaluation committee for evaluation of  
20 eligibility. Prior to authorizing a licentiate to enter into the  
21 diversion program, the Diversion Program Manager may require  
22 the licentiate, while under current investigation for any violations  
23 of the Dental Practice Act or other violations, to execute a  
24 statement of understanding that states that the licentiate understands  
25 that his or her violations of the Dental Practice Act or other statutes  
26 that would otherwise be the basis for discipline, may still be  
27 investigated and the subject of disciplinary action.

28 (d) If the reasons for a current investigation of a licentiate are  
29 based primarily on the self-administration of any controlled  
30 substance or dangerous drugs or alcohol under Section 1681 of  
31 the Business and Professions Code, or the illegal possession,  
32 prescription, or nonviolent procurement of any controlled substance  
33 or dangerous drugs for self-administration that does not involve  
34 actual, direct harm to the public, the board shall close the  
35 investigation without further action if the licentiate is accepted  
36 into the board’s diversion program and successfully completes the  
37 requirements of the program. If the licentiate withdraws or is  
38 terminated from the program by a ~~diversion evaluation committee~~  
39 the program manager, the investigation shall be reopened and



1 disciplinary action imposed, if warranted, as determined by the  
2 board.

3 (e) Neither acceptance nor participation in the diversion program  
4 shall preclude the board from investigating or continuing to  
5 investigate, or taking disciplinary action or continuing to take  
6 disciplinary action against, any licentiate for any unprofessional  
7 conduct committed before, during, or after participation in the  
8 diversion program.

9 (f) All licentiates shall sign an agreement of understanding that  
10 the withdrawal or termination from the diversion program at a time  
11 ~~when a diversion evaluation committee~~ *the program manager*  
12 determines the licentiate presents a threat to the public's health  
13 and safety shall result in the utilization by the board of diversion  
14 treatment records in disciplinary or criminal proceedings.

15 (g) Any licentiate terminated from the diversion program for  
16 failure to comply with program requirements is subject to  
17 disciplinary action by the board for acts committed before, during,  
18 and after participation in the diversion program. A licentiate who  
19 has been under investigation by the board and has been terminated  
20 from the diversion program by ~~a diversion evaluation committee~~  
21 *the program manager* shall be reported by ~~the diversion evaluation~~  
22 ~~committee~~ *program manager* to the board.

23 SEC. 6. Section 1695.6 of the Business and Professions Code  
24 is amended to read:

25 1695.6. *A committee created under this article operates in an*  
26 *advisory role to the diversion program manager.* Each committee  
27 shall have the following duties and responsibilities:

28 (a) To evaluate those licentiates who request to participate in  
29 the diversion program according to the guidelines prescribed by  
30 the board and to *make recommendations to the program manager.*  
31 *In making the recommendations, a committee shall* consider the  
32 recommendations of any licentiates designated by the board to  
33 serve as consultants on the admission of the licentiate to the  
34 diversion program.

35 (b) To review and designate those treatment facilities to which  
36 licentiates in a diversion program may be referred, *and make*  
37 *recommendations to the program manager.*

38 (c) To receive and review information concerning a licentiate  
39 participating in the program.

(d) To consider in the case of each licentiate participating in a program whether he or she may with safety continue or resume the practice of dentistry, *and make recommendations to the program manager.*

(e) To perform such other related duties, *in an advisory capacity*, as the board may by regulation require.

*SEC. 7. Section 1697 of the Business and Professions Code is amended to read:*

1697. Each licentiate who requests participation in a diversion program shall agree to cooperate with the treatment program designed by ~~a committee~~ *the program manager* and to bear all costs related to the program, unless the cost is waived by the board. Any failure to comply with the provisions of a treatment program may result in termination of the licentiate's participation in a program.

*SEC. 8. Section 1698 of the Business and Professions Code is amended to read:*

1698. (a) After ~~a committee~~ *the program manager* in ~~its~~ *his or her* discretion has determined that a licentiate has been rehabilitated and the diversion program is completed, the ~~committee~~ *program manager* shall purge and destroy all records pertaining to the licentiate's participation in a diversion program.

(b) Except as authorized by subdivision (f) of Section 1695.5, all board and committee records and records of proceedings pertaining to the treatment of a licentiate in a program shall be kept confidential and are not subject to discovery or subpoena.

*SEC. 9. Section 2361 of the Business and Professions Code is amended to read:*

2361. As used in this article:

(a) "Board" means the Osteopathic Medical Board of California.

(b) "Diversion program" means a treatment program created by this article for osteopathic physicians and surgeons whose competency may be threatened or diminished due to abuse of drugs or alcohol.

(c) "Committee" means a diversion evaluation committee created by this article.

(d) "Participant" means a California licensed osteopathic physician and surgeon.

1 (e) “Program manager” means the staff manager of the  
2 diversion program, as designated by the executive officer of the  
3 board.

4 SEC. 10. Section 2365 of the Business and Professions Code  
5 is amended to read:

6 2365. (a) The board shall establish criteria for the acceptance,  
7 denial, or termination of participants in the diversion program.  
8 Unless ordered by the board as a condition of disciplinary  
9 probation, only those participants who have voluntarily requested  
10 diversion treatment and supervision by a committee shall  
11 participate in the diversion program.

12 (b) A participant who is not the subject of a current investigation  
13 may self-refer to the diversion program on a confidential basis,  
14 except as provided in subdivision (f).

15 (c) A participant under current investigation by the board may  
16 also request entry into the diversion program by contacting the  
17 board’s Diversion Program Manager. The Diversion Program  
18 Manager may refer the participant requesting participation in the  
19 program to a diversion evaluation committee for evaluation of  
20 eligibility. Prior to authorizing a licensee to enter into the  
21 diversion program, the Diversion Program Manager may require  
22 the licensee, while under current investigation for any violations  
23 of the Medical Practice Act or other violations, to execute a  
24 statement of understanding that states that the licensee understands  
25 that his or her violations of the Medical Practice Act or other  
26 statutes that would otherwise be the basis for discipline may still  
27 be investigated and the subject of disciplinary action.

28 (d) If the reasons for a current investigation of a participant are  
29 based primarily on the self-administration of any controlled  
30 substance or dangerous drugs or alcohol under Section 2239, or  
31 the illegal possession, prescription, or nonviolent procurement of  
32 any controlled substance or dangerous drugs for self-administration  
33 that does not involve actual, direct harm to the public, the board  
34 may close the investigation without further action if the licensee  
35 is accepted into the board’s diversion program and successfully  
36 completes the requirements of the program. If the participant  
37 withdraws or is terminated from the program by ~~a diversion~~  
38 ~~evaluation committee~~ the program manager, the investigation may  
39 be reopened and disciplinary action imposed, if warranted, as  
40 determined by the board.

(e) Neither acceptance nor participation in the diversion program shall preclude the board from investigating or continuing to investigate, or taking disciplinary action or continuing to take disciplinary action against, any participant for any unprofessional conduct committed before, during, or after participation in the diversion program.

(f) All participants shall sign an agreement of understanding that the withdrawal or termination from the diversion program at a time when ~~a diversion evaluation committee~~ *the program manager* determines the licensee presents a threat to the public's health and safety shall result in the utilization by the board of diversion treatment records in disciplinary or criminal proceedings.

(g) Any participant terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the board for acts committed before, during, and after participation in the diversion program. A participant who has been under investigation by the board and has been terminated from the diversion program by ~~a diversion evaluation committee~~ *the program manager* shall be reported by ~~the diversion evaluation committee~~ *the program manager* to the board.

*SEC. 11. Section 2366 of the Business and Professions Code is amended to read:*

2366. *A committee created under this article operates in an advisory role to the diversion program manager.* Each committee shall have the following duties and responsibilities:

(a) To evaluate those licensees who request participation in the program according to the guidelines prescribed by the board, *and to make recommendations to the program manager.*

(b) To review and designate those treatment facilities and services to which a participant in the program may be referred, *and to make recommendations to the program manager.*

(c) To receive and review information concerning participants in the program.

(d) To consider whether each participant in the treatment program may safely continue or resume the practice of medicine, *and to make recommendations to the program manager.*

(e) To prepare quarterly reports to be submitted to the board, which include, but are not limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance and a cost analysis of the program.

1 (f) To promote the program to the public and within the  
2 profession, including providing all current licentiates with written  
3 information concerning the program.

4 (g) To perform such other related duties as the board may by  
5 regulation require.

6 *SEC. 12. Section 2367 of the Business and Professions Code*  
7 *is amended to read:*

8 2367. (a) Each licensee who requests participation in a  
9 treatment program shall agree to cooperate with the treatment  
10 program designed by the ~~committee~~ *program manager*. The  
11 committee shall inform each participant in the program of the  
12 procedures followed, the rights and responsibilities of the  
13 participant, and the possible results of noncompliance with the  
14 program. Any failure to comply with the treatment program may  
15 result in termination of participation.

16 (b) Participation in a program under this article shall not be a  
17 defense to any disciplinary action which may be taken by the board.  
18 Further, no provision of this article shall preclude the board from  
19 commencing disciplinary action against a licensee who is  
20 terminated from a program established pursuant to this article.

21 *SEC. 13. Section 2369 of the Business and Professions Code*  
22 *is amended to read:*

23 2369. (a) After a ~~committee~~ *the program manager*, in ~~its~~ *his*  
24 *or her* discretion, has determined that a participant has been  
25 rehabilitated and the program is completed, the ~~committee~~ *program*  
26 *manager* shall purge and destroy all records pertaining to the  
27 participation in a treatment program.

28 (b) Except as authorized by subdivision (f) of Section 2365, all  
29 board and committee records and records of proceedings pertaining  
30 to the treatment of a participant in a program shall be confidential  
31 and are not subject to discovery or subpoena except in the case of  
32 discovery or subpoena in any criminal proceeding.

33 *SEC. 14. Section 2663 of the Business and Professions Code*  
34 *is amended to read:*

35 2663. The board shall establish and administer a diversion  
36 program for the rehabilitation of physical therapists and physical  
37 therapist assistants whose competency is impaired due to the abuse  
38 of drugs or alcohol. The board may contract with any other state  
39 agency or a private organization to perform its duties under this  
40 article. The board may establish one or more diversion evaluation

committees to assist it in carrying out its duties under this article.  
*Any diversion evaluation committee established by the board shall operate in an advisory role to the diversion program manager, as designated by the executive officer of the board.*

SEC. 15. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) ~~The evaluation of~~ *To evaluate* physical therapists and physical therapist assistants who request participation in the program and ~~the consideration of~~ *to make recommendations to the program manager. In making recommendations, the committee shall consider* any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) ~~The~~ *To* review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred, *and to make recommendations to the program manager.*

(c) The receipt and review of information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) ~~The consideration of~~ *To consider* whether each participant in the diversion program may with safety continue or resume the practice of physical therapy, *and to make recommendations to the program manager.*

(f) ~~Setting forth in writing a treatment program for each participant in the diversion program with requirements for supervision and surveillance.~~ *To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each physical therapist and physical therapist assistant participating in the program, including treatment, supervision, and monitoring requirements.*

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress,

1 to prepare reports to be submitted to the board, and to suggest  
2 proposals for changes in the diversion program.

3 (h) For the purposes of Division 3.6 (commencing with Section  
4 810) of Title 1 of the Government Code, any member of a diversion  
5 evaluation committee shall be considered a public employee. No  
6 board or diversion evaluation committee member, contractor, or  
7 agent thereof, shall be liable for any civil damage because of acts  
8 or omissions which may occur while acting in good faith in a  
9 program established pursuant to this article.

10 *SEC. 16. Section 2666 of the Business and Professions Code*  
11 *is amended to read:*

12 2666. (a) Criteria for acceptance into the diversion program  
13 shall include all of the following:

14 (1) The applicant shall be licensed as a physical therapist or  
15 approved as a physical therapist assistant by the board and shall  
16 be a resident of California.

17 (2) The applicant shall be found to abuse dangerous drugs or  
18 alcoholic beverages in a manner which may affect his or her ability  
19 to practice physical therapy safely or competently.

20 (3) The applicant shall have voluntarily requested admission to  
21 the program or shall be accepted into the program in accordance  
22 with terms and conditions resulting from a disciplinary action.

23 (4) The applicant shall agree to undertake any medical or  
24 psychiatric examination ordered to evaluate the applicant for  
25 participation in the program.

26 (5) The applicant shall cooperate with the program by providing  
27 medical information, disclosure authorizations, and releases of  
28 liability as may be necessary for participation in the program.

29 (6) The applicant shall agree in writing to cooperate with all  
30 elements of the treatment program designed for him or her.

31 Any applicant may be denied participation in the program if the  
32 board, ~~its designee, or a diversion evaluation committee, as the~~  
33 ~~case may be, or the program manager~~ determines that the applicant  
34 will not substantially benefit from participation in the program or  
35 that the applicant's participation in the program creates too great  
36 a risk to the public health, safety, or welfare.

37 (b) A participant may be terminated from the program for any  
38 of the following reasons:

39 (1) The participant has successfully completed the treatment  
40 program.

1 (2) The participant has failed to comply with the treatment  
2 program designated for him or her.

3 (3) The participant fails to meet any of the criteria set forth in  
4 subdivision (a) or (c).

5 (4) It is determined that the participant has not substantially  
6 benefited from participation in the program or that his or her  
7 continued participation in the program creates too great a risk to  
8 the public health, safety, or welfare. Whenever an applicant is  
9 denied participation in the program or a participant is terminated  
10 from the program for any reason other than the successful  
11 completion of the program, and it is determined that the continued  
12 practice of physical therapy by that individual creates too great a  
13 risk to the public health, safety, and welfare, that fact shall be  
14 reported to the executive officer of the board and all documents  
15 and information pertaining to and supporting that conclusion shall  
16 be provided to the executive officer. The matter may be referred  
17 for investigation and disciplinary action by the board. Each physical  
18 therapist or physical therapy assistant who requests participation  
19 in a diversion program shall agree to cooperate with the recovery  
20 program designed for him or her. Any failure to comply with that  
21 program may result in termination of participation in the program.

22 The diversion evaluation committee shall inform each participant  
23 in the program of the procedures followed in the program, of the  
24 rights and responsibilities of a physical therapist or physical  
25 therapist assistant in the program, and the possible results of  
26 noncompliance with the program.

27 (c) In addition to the criteria and causes set forth in subdivision  
28 (a), the board may set forth in its regulations additional criteria for  
29 admission to the program or causes for termination from the  
30 program.

31 *SEC. 17. Section 2770.1 of the Business and Professions Code*  
32 *is amended to read:*

33 2770.1. As used in this article:

34 (a) “Board” means the Board of Registered Nursing.

35 (b) “Committee” means a diversion evaluation committee  
36 created by this article.

37 (c) “Program manager” means the staff manager of the  
38 diversion program, as designated by the executive officer of the  
39 board.



1     *SEC. 18. Section 2770.8 of the Business and Professions Code*  
2     *is amended to read:*

3     2770.8. *A committee created under this article operates in an*  
4     *advisory role to the diversion program manager. Each committee*  
5     *shall have the following duties and responsibilities:*

6     (a) *To evaluate those registered nurses who request participation*  
7     *in the program according to the guidelines prescribed by the board,*  
8     *and to make recommendations to the program manager.*

9     (b) *To review and designate those treatment services to which*  
10    *registered nurses in a diversion program may be referred, and to*  
11    *make recommendations to the program manager.*

12    (c) *To receive and review information concerning a registered*  
13    *nurse participating in the program.*

14    (d) *To consider in the case of each registered nurse participating*  
15    *in a program whether he or she may with safety continue or resume*  
16    *the practice of nursing, and to make recommendations to the*  
17    *program manager.*

18    (e) *To call meetings as necessary to consider the requests of*  
19    *registered nurses to participate in a diversion program, and to*  
20    *consider reports regarding registered nurses participating in a*  
21    *program.*

22    (f) ~~*To set forth in writing for each registered nurse participating*~~  
23    ~~*in a program a rehabilitation program established for that registered*~~  
24    ~~*nurse with the requirements for supervision and surveillance. To*~~  
25    ~~*make recommendations to the program manager regarding the*~~  
26    ~~*terms and conditions of the diversion agreement for each registered*~~  
27    ~~*nurse participating in the program, including treatment,*~~  
28    ~~*supervision, and monitoring requirements.*~~

29    *SEC. 19. Section 2770.11 of the Business and Professions Code*  
30    *is amended to read:*

31    2770.11. (a) *Each registered nurse who requests participation*  
32    *in a diversion program shall agree to cooperate with the*  
33    *rehabilitation program designed by a committee the program*  
34    *manager. Any failure to comply with the provisions of a*  
35    *rehabilitation program may result in termination of the registered*  
36    *nurse's participation in a program. The name and license number*  
37    *of a registered nurse who is terminated for any reason, other than*  
38    *successful completion, shall be reported to the board's enforcement*  
39    *program.*

(b) If ~~a committee~~ *the program manager* determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, ~~the committee~~ *the program manager* shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

*SEC. 20. Section 2770.12 of the Business and Professions Code is amended to read:*

2770.12. (a) After ~~a committee~~ *the program manager* in ~~its~~ *his or her* discretion has determined that a registered nurse has successfully completed the diversion program, all records pertaining to the registered nurse's participation in the diversion program shall be purged.

(b) All board and committee records and records of a proceeding pertaining to the participation of a registered nurse in the diversion program shall be kept confidential and are not subject to discovery or subpoena, except as specified in subdivision (b) of Section 2770.11 and subdivision (c).

(c) A registered nurse shall be deemed to have waived any rights granted by any laws and regulations relating to confidentiality of the diversion program, if he or she does any of the following:

(1) Presents information relating to any aspect of the diversion program during any stage of the disciplinary process subsequent to the filing of an accusation, statement of issues, or petition to compel an examination pursuant to Article 12.5 (commencing with Section 820) of Chapter 1. The waiver shall be limited to information necessary to verify or refute any information disclosed by the registered nurse.

(2) Files a lawsuit against the board relating to any aspect of the diversion program.

(3) Claims in defense to a disciplinary action, based on a complaint that led to the registered nurse's participation in the diversion program, that he or she was prejudiced by the length of time that passed between the alleged violation and the filing of the accusation. The waiver shall be limited to information necessary to document the length of time the registered nurse participated in the diversion program.

1     *SEC. 21. Section 3534.1 of the Business and Professions Code*  
2     *is amended to read:*

3     3534.1. The examining committee shall establish and  
4     administer a diversion program for the rehabilitation of physician  
5     assistants whose competency is impaired due to the abuse of drugs  
6     or alcohol. The examining committee may contract with any other  
7     state agency or a private organization to perform its duties under  
8     this article. The examining committee may establish one or more  
9     diversion evaluation committees to assist it in carrying out its  
10    duties under this article. As used in this article, “committee” means  
11    a diversion evaluation committee. *A committee created under this*  
12    *article operates in an advisory role to the diversion program*  
13    *manager, as designated by the executive officer of the examining*  
14    *committee.*

15    *SEC. 22. Section 3534.3 of the Business and Professions Code*  
16    *is amended to read:*

17    3534.3. Each committee has the following duties and  
18    responsibilities:

19    (a) ~~The evaluation of~~ *To evaluate* physician assistants who  
20    request participation in the program and *to make recommendations*  
21    *to the program manager. In making recommendations, a committee*  
22    *shall* consider any recommendations from professional consultants  
23    on the admission of applicants to the diversion program.

24    (b) ~~The review and designation of~~ *To review and designate*  
25    treatment facilities to which physician assistants in the diversion  
26    program may be referred, *and to make recommendations to the*  
27    *program manager.*

28    (c) The receipt and review of information concerning physician  
29    assistants participating in the program.

30    (d) To call meetings as necessary to consider the requests of  
31    physician assistants to participate in the diversion program, to  
32    consider reports regarding participants in the program, and to  
33    consider any other matters referred to it by the examining  
34    committee.

35    (e) ~~The consideration of~~ *To consider* whether each participant  
36    in the diversion program may with safety continue or resume the  
37    practice of medicine, *and to make recommendations to the program*  
38    *manager.*

39    (f) ~~To set forth in writing a treatment program for each~~  
40    ~~participant in the diversion program with requirements for~~

~~supervision and surveillance. To make recommendations to the program manager regarding the terms and conditions of the diversion agreement for each physician assistant participating in the program, including treatment, supervision, and monitoring requirements.~~

(g) To hold a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the examining committee, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a committee shall be considered a public employee. No examining committee or committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 23. *Section 3534.4 of the Business and Professions Code is amended to read:*

3534.4. Criteria for acceptance into the diversion program shall include all of the following: (a) the applicant shall be licensed as a physician assistant by the examining committee and shall be a resident of California; (b) the applicant shall be found to abuse dangerous drugs or alcoholic beverages in a manner which may affect his or her ability to practice medicine safely or competently; (c) the applicant shall have voluntarily requested admission to the program or shall be accepted into the program in accordance with terms and conditions resulting from a disciplinary action; (d) the applicant shall agree to undertake any medical or psychiatric examination ordered to evaluate the applicant for participation in the program; (e) the applicant shall cooperate with the program by providing medical information, disclosure authorizations, and releases of liability as may be necessary for participation in the program; and (f) the applicant shall agree in writing to cooperate with all elements of the treatment program designed for him or her.

An applicant may be denied participation in the program if the examining committee, ~~its delegatee, or a committee, as the case may be,~~ or the program manager determines that the applicant will not substantially benefit from participation in the program or

1 that the applicant's participation in the program creates too great  
2 a risk to the public health, safety, or welfare.

3 *SEC. 24. Section 3534.9 of the Business and Professions Code*  
4 *is amended to read:*

5 3534.9. If the examining committee contracts with any other  
6 entity to carry out this section, the executive officer of the  
7 examining committee, ~~or his or her delegatee, or the program~~  
8 ~~manager~~ shall review the activities and performance of the  
9 contractor on a biennial basis. As part of this review, the examining  
10 committee shall review files of participants in the program.  
11 However, the names of participants who entered the program  
12 voluntarily shall remain confidential, except when the review  
13 reveals misdiagnosis, case mismanagement, or noncompliance by  
14 the participant.

15 ~~SECTION 1. Article 3.6 (commencing with Section 315) is~~  
16 ~~added to Chapter 4 of Division 1 of the Business and Professions~~  
17 ~~Code, to read:~~

18  
19 ~~Article 3.6—Healing Arts Licensee Addiction and Diversion~~  
20

21 ~~315. (a) There is established in the Department of Consumer~~  
22 ~~Affairs the Diversion Coordination Committee. The committee~~  
23 ~~shall be comprised of the executive officers of those healing arts~~  
24 ~~licensing boards within the department that establish and maintain~~  
25 ~~diversion programs or diversion evaluation committees. The~~  
26 ~~Director of Consumer Affairs shall act as the chair of the~~  
27 ~~committee.~~

28 ~~(b) The committee shall meet periodically at the discretion of~~  
29 ~~the director and shall, no later than January 1, 2010, issue a set of~~  
30 ~~best practices and recommendations to govern those healing arts~~  
31 ~~licensing boards' diversion programs or diversion evaluation~~  
32 ~~committees. These recommendations shall propose best practices,~~  
33 ~~regulations, or changes in law, as are necessary, and shall include,~~  
34 ~~but shall not be limited to, recommendations addressing all of the~~  
35 ~~following issues:~~

36 ~~(1) When a licensee is to be irrevocably terminated from the~~  
37 ~~diversion program and referred for disciplinary action.~~

38 ~~(2) Periodic audits of the program.~~

1     ~~(3) Whether a licensee enrolled in the program who may pose~~  
2     ~~a risk to patients may continue to practice while in the program~~  
3     ~~without the knowledge or consent of patients.~~

4     ~~(4) How best to ensure that drug tests are random, accurate, and~~  
5     ~~reliable, and that results for those tests are obtained quickly.~~

6     ~~(5) Whether there should be criteria for entry into the program,~~  
7     ~~such as criteria that differentiate between licensees who the board~~  
8     ~~has reason to believe pose a risk to patients and those where the~~  
9     ~~risk is speculative.~~

10    ~~316. (a) There is established in the Department of Consumer~~  
11    ~~Affairs the Licensee Drug and Alcohol Addiction Coordination~~  
12    ~~Committee. The committee shall be comprised of the executive~~  
13    ~~officers of the healing arts licensing boards within the department~~  
14    ~~that do not establish and maintain diversion programs or diversion~~  
15    ~~evaluation committees. The Director of Consumer Affairs shall~~  
16    ~~act as the chair of the committee.~~

17    ~~(b) The committee shall meet periodically at the discretion of~~  
18    ~~the department and shall, no later than January 1, 2010, issue a set~~  
19    ~~of best practices and recommendations to govern those healing~~  
20    ~~arts licensing boards' disciplinary programs as they relate to~~  
21    ~~disciplinary matters relating to drug or alcohol addiction. These~~  
22    ~~recommendations shall propose best practices, regulations, or~~  
23    ~~changes in law, as are necessary, and shall include, but shall not~~  
24    ~~be limited to, recommendations addressing all of the following~~  
25    ~~issues, related to drug or alcohol abuse:~~

26    ~~(1) Criteria for placing a licensee on probation and related~~  
27    ~~criteria for reporting and monitoring the probation.~~

28    ~~(2) Criteria for refusing a request for probation.~~

29    ~~(3) Criteria for imposition of discipline and the level of~~  
30    ~~discipline.~~

31    ~~(4) Criteria for restoration of a license.~~

32    ~~317. For purposes of this article, "healing arts licensing board"~~  
33    ~~means any board established pursuant to Division 2 (commencing~~  
34    ~~with Section 500), the State Board of Chiropractic Examiners, or~~  
35    ~~the Osteopathic Medical Board of California.~~